

Opinion of the Court.

UNITED STATES *v.* VAN DUZEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF IOWA.

No. 1244. Reported on page 169, *ante*.—This correction announced May 25, 1891.

The court makes a correction in paragraph seven of its opinion in this case.

THE opinion of the court in this case is reported *ante*, 169. The seventh paragraph of the opinion is as follows (p. 175)

“7. Objection is also made to fees for entering orders for trial, and recording the verdict, in thirty-eight criminal cases, the claim being that such services are included in the fee allowed ‘for making dockets and indexes, issuing venire, taxing costs and all other services, on the trial or argument of a cause where issue is joined and testimony given, three dollars.’ The argument is made that the entry of an order for trial, and the recording of the verdict are not services rendered upon the trial and argument of the cause, since the order for trial precedes the trial and the verdict follows it. Referring to the clause in question, however, to determine what shall be deemed services on the trial of a case, we find that issuing venires and taxing costs are included among such services. The former of these certainly precedes the actual trial, and the latter follows not only the verdict, but the judgment. We think it follows from this that the docket fee was intended to include these services. If it does not, it is not easy to say what it was intended to cover.”

The names of counsel are stated on page 170.

MR. JUSTICE BROWN delivered the opinion of the court.

Upon a reconsideration of the seventh paragraph of our opinion in this case, we have come to the conclusion that the item for entering the orders for trial, and recording the verdict should be allowed. We think the docket fee of three dollars was intended to cover the entry of the case upon the

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docket, indexing the same, making cotemporaneous minutes and entries upon the docket or calendar and such other incidental services as are not covered by other clauses of the statute. Where, however, the entry is not a mere memorandum, but requires to be made part of a permanent record, it is a proper subject for a charge per folio.

The item in this case was properly allowed by the court below as for "making a record."

The opinion in the above case will be varied to this extent.

In re CLAASEN.

ORIGINAL.

No. 16. Original. Argued April 30, 1891. — Decided May 11, 1891.

Under § 5 of the act of March 3, 1891, entitled "An act to establish Circuit Courts of Appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States and for other purposes," a writ of error may, even before July 1, 1891, issue from this court to a Circuit Court, in the case of a conviction of a crime under § 5209 of the Revised Statutes, where the conviction occurred May 28, 1890, but a sentence of imprisonment in a penitentiary was imposed March 18, 1891.

A crime is "infamous" under that act, where it is punishable by imprisonment in a state prison or penitentiary, whether the accused is or is not sentenced or put to hard labor.

Such writ of error is a matter of right, and, under § 999 of the Revised Statutes, the citation may be signed by a justice of this court, as an authority for the issuing of the writ under § 1004.

At the time of the conviction, no writ of error from this court, in the case, was provided for by statute, nor was any bill of exceptions, with a view to a writ of error, provided for by statute or rule; and, therefore, a mandamus will not lie to the judge who presided at the trial, to compel him to settle a bill of exceptions which was presented to him for settlement after the sentence; nor can the minutes of the trial, as settled by the judge by consent, and signed by him, and printed and filed in July 1890, and on which a motion for a new trial was heard in October, 1890, be treated by this court, on the return to the writ of error, as a bill of exceptions properly forming part of the record.

A criminal court in the Southern District of New York, sitting as a Circuit